

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**IN RE:
RAYNALDO X. BUSH**

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§

**CHAPTER 13
CASE NO. 21-50116 G**

DEBTOR(S)

TRUSTEE'S OBJECTION TO MOTION TO RETAIN SAVINGS

COMES NOW Mary K. Viegelahn, Trustee in the above captioned case, and files this Objection to Motion to Retain Savings. In support thereof, the Trustee would show the Court the following:

1. On February 1, 2021, The Debtor(s) filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.
2. On August 20, 2021, the Debtor filed a Motion to Retain Savings. (ECF #25.)
3. The Motion states that on the date of filing, an amount of \$8,558.00 was garnished from Debtor's bank savings account by a Receiver pre-petition and then transferred to the Chapter 13 Trustee. The Motion therein after refers to the money as "savings".
4. Referring to the \$8,558.24 as "savings" appears to be a mischaracterization as this is money owed by the Debtor is the result of a pre-petition Judgment and the Creditor, through a Receiver, properly garnished Debtor's account and had in her possession cash in the amount of \$8,552.24. It was as of the petition date, the Creditor's money, not the Debtor's.
5. The Trustee would note that the Debtor is the named Defendant in a pre-petition lawsuit styled Cause No. 320484; *Collins Financial Services, Inc., Successor of IRF Capital Recovery Fund, LLC as Assignee of Metris Companies, Inc. Successor of Direct Merchants Bank v. Raynaldo X. Bush*; In the County Court at Law Number 3; Bexar County, Texas. In June 2020, pre-petition, an Order Appointing Post-Judgment Receiver Linda Gimbel

Pursuant to Tex. Civ. Prac. & Rem. Code 31.002 appointing Linda Gimbel as a receiver and setting forth various rights of the receiver was entered.

6. Pre-petition, in January 2021, Ms. Gimbel received \$8,558.24 in non-exempt funds from FirstMark Credit Union in response to being served with a copy of the receivership order. Upon information and belief, the funds were from a savings account, checking account and a certificate of deposit. Ms. Gimbel tendered the \$8,558.24 to the Chapter 13 Trustee and the funds were received by the Trustee on or about March 2, 2021 as required by 11 U.S.C. §543.
7. The Court should take judicial notice of the Debtor's Schedule B (ECF #7) which states Debtor has a checking account with FirstMark Credit Union with a balance of \$0.00 as of the Petition date. The Debtor cannot seek possession of property that was not his. In addition, the Statement of Financial Affairs #10 states "No" in answer to the question, "Within 1 year before you filed for bankruptcy, was any of your property repossessed, foreclosed, garnished, attached, seized or levied?"
8. The Motion states the \$8,558.24 is needed by the Debtor for urgent home repairs and is reasonably necessary for his maintenance and his support. Exhibit A and Exhibit B (attached to ECF #25) appear to support the necessity for home repairs, however, the Trustee submits these funds are not the Debtor's property and as such the Debtor may not use them for said home repairs.
9. Paragraph III of the Motion states the Debtor "has been denied access to the use of his savings" and is therefore unable to complete the home repairs "despite the fact that Debtor's amended Plan meets the Best Interest of Creditors Test ("liquidation test")." The Motion then references Exhibit D, a transcript of a hearing on confirmation in Case No. 20-51267 held on March 25, 2021.
 - a. The ruling detailed in the Exhibit "D" transcript concerns the treatment of a post-petition inheritance received by the Debtor. The Trustee would note that in the current case, the money was neither received post-petition nor is it an inheritance received by the Debtor, thus, the facts in the Exhibit "D" ruling are not applicable

to the current case.

- b. Paragraph III suggests that the money is needed for home repairs. However, the current Chapter 13 Plan pending confirmation (ECF #10) appears to earmark these funds to pay the Debtor's Attorney. Section 2.1 of the Chapter 13 Plan (ECF #10) lists a plan payment of \$8,558.00 in month one along with the following language in Section 8 Nonstandard Plan Provisions: "The Vasquez Law Firm will be paid in full @ \$3,600 in month 1 of the plan."
10. The Trustee submits that the \$8,558.24 is not the Debtor's savings, but instead is a preferential transfer subject to an avoidance pursuant to 11 U.S.C. §547. Further, because the funds are a non-exempt asset they must be paid to the allowed general unsecured claims.
11. 11 U.S.C. §551 states "any transfer avoided under 11 U.S.C. §547 is preserved for the benefit of the estate, but only with respect to property of the estate." If Creditor admits the monies were received within 90 days of filing the petition, the Trustee transfer is a preferential transfer. The Trustee asserts that this transfer is a preference pursuant to 11 U.S.C. §547. Upon information and belief, the \$8,558.00 was provided to the Receiver on or about January 13, 2021. As a preferential transfer, the recovery of this preference is preserved for the estate, is a non-exempt asset that was not in the Debtor's possession at the time of filing, and should be distributed to the general unsecured creditors.
12. The Debtor could have avoided this situation by filing the Petition prior to the execution of the levy.

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that the Court deny the Motion to Retain Savings and for such other and further relief as this court may deem proper.

Date: August 26, 2021

/s/Marshall L. Armstrong
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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Raynaldo X. Bush

CASE NO.:21-50116 G

DEBTOR(S)

CHAPTER 13

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached document was served **August 26, 2021** by First Class Mail, upon the following:

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